

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Hearing: February 9, 2023

Mailed: September 5, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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Jekyll Island-State Park Authority v. Stratatomic LLC
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Cancellation No. 92074348
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Eileen H. Rumfelt, Charles W. Forlidas and Pharan A. S. Evans of Miller & Martin PLLC for Jekyll Island-State Park Authority.

Stratatomic LLC, *pro se*.

—
Before Taylor, English, and Lebow,
Administrative Trademark Judges.

Opinion by Lebow, Administrative Trademark Judge:

Respondent, Stratatomic LLC, owns a Supplemental Register registration for the standard-character mark THE OFFICIAL WEBSITE OF JEKYLL ISLAND for the following services in International Class 35:

Advertising and directory services, namely, promoting the services of others by providing a web page featuring links to the websites of others; Advertising services, namely, promoting and marketing the goods and services of others in the field of hospitality via print and electronic media; Chamber of commerce services, namely, promoting business and tourism in the Jekyll Island area; Chamber of commerce services, namely, promoting business, travel and tourism in the Jekyll Island area; Commercial information and directory agency; Compilation of business directories; Convention and visitors bureau services, namely, promoting tourism, business and conventions in and around the Jekyll

Island area; Convention and visitors bureau services, namely, promoting business and tourism in the Jekyll Island area; Convention and visitors bureau services, namely, promoting business, tourism and the holding of conventions in the Jekyll Island area; Convention and visitors bureau services, namely, promoting conventions and tourism in the Jekyll Island area; Cooperative advertising and marketing services by way of solicitation, customer service and providing marketing information via web sites on a global computer network; Leasing of advertising space on website; Marketing services in the nature of website advertising; Marketing services, namely, providing informational web pages designed to generate sales traffic via hyperlinks to other web sites; On-line business directories featuring businesses of Jekyll Island, namely, businesses in the fields of accommodations, hotels, condos, campgrounds, vacation rentals and homes, restaurants, bars, golf courses, shops and stores, fishing, tours, attractions, charters, outdoor recreation, outfitters, weddings, churches, marinas, parks, beaches, historic sites, museums; On-line buyers guide service providing information in the field of hospitality; Promoting tourism in Jekyll Island area; Promoting and marketing the goods and services of others by links to websites; Promoting recreation and tourism in Jekyll Island; Promoting the goods and services of others by means of operating an on-line shopping mall with links to the retail web sites of others; Promoting the goods and services of others by providing a web site featuring coupons, rebates, price-comparison information, product reviews, links to the retail web sites of others, and discount information; Promoting the goods and services of others by providing a web site featuring links to websites for accommodations, hotels, condos, campgrounds, vacation rentals and homes, restaurants, bars, golf courses, shops and stores, fishing, tours, attractions, charters, outdoor recreation, outfitters, weddings, churches, marinas, parks, beaches, historic sites, museums; Promoting the goods and services of others by providing a website featuring coupons, rebates, price-comparison information, product reviews, links to the retail websites of others, and discount information; Promoting the goods and services of others by providing hypertext links to the web sites of others; Promoting the goods and services of others by providing links to websites of others for accommodations, hotels, condos, campgrounds, vacation rentals and homes, restaurants, bars, golf courses, shops and stores, fishing, tours, attractions, charters, outdoor recreation, outfitters, weddings, churches, marinas, parks, beaches, historic sites, museums; Promoting, advertising and marketing of the brands, products, services and online websites of individuals, businesses and nonprofit organizations; Providing a web site which features advertisements for the goods and services of others on a global computer network; Providing a website

featuring a list of items and services available for rent by others; Providing a website featuring on-line classified advertisements; Providing a website for connecting sellers with buyers; Providing a searchable on-line advertising website and guide featuring the goods and services of other vendors via the Internet; Providing a searchable online advertising guide featuring the goods and services of online vendors; Providing a searchable online advertising guide featuring the goods and services of other on-line vendors on the internet; Providing a searchable online advertising website and informational guide featuring the goods and services of other vendors via the internet in the field of hospitality; Providing an on-line commercial information directory on the internet; Providing business information via a web site; Providing business information via a website; Providing on-line price comparisons of travel and lodging services; Providing on-line trade directory services; Providing on-line web directory services featuring hyperlinks to the websites of others; Providing on-line web directory services featuring hyperlinks to the websites of businesses; Providing space at a web site for the advertisement of the goods and services of others; Providing telephone directory information via the internet; Provision of a web site featuring commercial information on shopping; Provision of space on websites for advertising goods and services; Rental of advertising space on web sites; Rental of advertising space on website; Shoppers' guide information.¹

Petitioner, Jekyll Island-State Park Authority, seeks cancellation of Respondent's registration for THE OFFICIAL WEBSITE OF JEKYLL ISLAND on the following grounds: (1) geographic deceptiveness and/or geographically deceptive misdescriptiveness; (2) failure to function as a trademark; (3) likelihood of confusion with Petitioner's previously used mark or trade name JEKYLL ISLAND AUTHORITY for "the conservation, development, and management of Jekyll Island,

¹ Registration No. 6044377; issued April 28, 2020.

Citations in this opinion to the briefs and other entries in the case docket refer to TTABVUE, the Board's public online docketing system. *See New Era Cap Co. v. Pro Era, LLC*, 2020 USPQ2d 10596, *2 n.1 (TTAB 2020). The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear.

including organizing, operating, and promoting services of island residents and business and maintaining the island’s ecosystem”; (4) false suggestion of a connection with Petitioner; and (5) deceptiveness.²

Respondent, in its answer to the petition for cancellation, admits that:

- “Jekyll Island is a barrier island off the southeastern coast of Georgia that has been owned by the State of Georgia since 1947”;³
- “[b]y incorporating the word ‘official’ in the mark, Respondent’s Registration suggests to consumers that the services Respondent provides via its website are the authority on [] Jekyll Island or come from an ‘official’ source related to Jekyll Island”;⁴ and
- “Respondent is not affiliated with the State of Georgia or [Petitioner].”⁵

Respondent denies the remaining salient allegations in the petition for cancellation.⁶

² 8 TTABVUE (Amended Petition for Cancellation).

³ 9 TTABVUE 2 (Answer ¶ 1).

⁴ *Id.* at 5 (¶ 46).

⁵ *Id.* at 6 (¶ 47).

⁶ *Id.* at 7. Respondent pleaded a number of affirmative defenses. Two of those defenses, laches and acquiescence, are not available against Petitioner’s claim of deceptiveness under Section 2(a) and, here, we do not reach any of the claims beyond deceptiveness. *See In re Am. Speech-Language-Hearing Ass’n*, 224 USPQ 798, 804, n.4 (TTAB 1984) (“[A]llegations of deceptiveness and deceptive misdescriptiveness are not subject to the defense of laches or acquiescence since the public’s concern in not having deceptive or deceptively misdescriptive marks registered cannot be overcome by any inaction of the petitioner.”). *See also Harjo v. Pro Football, Inc.*, 30 USPQ2d 1828, 1831 (TTAB 1994) (“[F]or public policy reasons, the Board has held that laches and estoppel are not available to a defendant in a proceeding where a plaintiff is claiming that the mark sought to be registered is merely descriptive, deceptive or deceptively misdescriptive.”). Respondent also asserted “unclean hands,” but did not argue this defense in its brief, so it is waived or forfeited. *Alcatraz Media, Inc. v. Chesapeake Marine Tours, Inc.*, 107 USPQ2d 1750, 1753 (TTAB 2013) (affirmative defense not argued in brief deemed waived), *aff’d mem.*, 565 F. App’x 900 (Fed. Cir. 2014). A fourth alleged defense that “[a]ny and all acts alleged to have been committed by [Respondent] were performed with lack of knowledge and lack of willful intent” (9 TTABVUE 7, ¶ 13) is not a defense to any of the asserted claims in the amended petition for cancellation. A fifth alleged defense that “Petitioner has waived any right to pursue” cancellation (*id.* at ¶ 10) is not a

For the reasons discussed below, we grant the petition for cancellation on the ground that THE OFFICIAL WEBSITE OF JEKYLL ISLAND is deceptive under Section 2(a) of the Trademark Act.

I. Preliminary Issues

Petitioner filed objections to Respondent's trial evidence after the close of Respondent's testimony period.⁷ In an order that followed, the Interlocutory Attorney assigned to this case addressed most of Petitioner's objections, but deferred until trial Petitioner's objection to the purported expert testimony of Respondent's owner, Ryan Owens, "as an expert in the field of marketing, advertisement, and brand promotion" in his February 16, 2022 testimony declaration.⁸

In the meantime, the Board re-opened Respondent's testimony period to, among other things, allow Respondent an opportunity to cure certain defects in Mr. Owens' declaration and notice of reliance.⁹ Respondent proceeded to do that, filing on November 29, 2022 an "amended" testimony declaration of Mr. Owens with exhibits,¹⁰ as well as an amended notice of reliance on his February 15, 2022 testimony declaration with exhibits and additional exhibits.¹¹

Petitioner renews its objection to the purported improper expert testimony of Mr.

cognizable defense. Additional alleged defenses were found not to be defenses in the Board's order of September 29, 2022. 36 TTABVUE 2.

⁷ 43 TTABVUE 51-53 (Petitioner's Brief).

⁸ 36 TTABVUE (Board Order of September 29, 2022).

⁹ *Id.* at 14.

¹⁰ 40 TTABVUE.

¹¹ 39 TTABVUE.

Owens in its brief.¹² Petitioner also objects to specific paragraphs, pages and exhibits in the amended declaration (§§ 39-41, 80, and 93-95) “as well as their counterparts in the February Owens Declaration” on the ground that they “contain legal arguments inappropriate for a testimonial declaration.”¹³

Petitioner’s objection to the purported improper expert testimony of Mr. Owens is moot. We do not rely on the objected-to testimony in his declarations or the evidence he supplies with them to reach our decision in this case, because it addresses claims that we do not reach.

Petitioner’s objection to the declarations on the ground that they contain legal arguments is overruled. Board proceedings are heard by Administrative Trademark Judges, not lay jurors who might be easily misled, confused, or prejudiced by flawed evidence. *Cf. Harris v. Rivera*, 454 U.S. 339, 346, 102 S. Ct. 460, 70 L. Ed. 2d 530 (1981) (“In bench trials, judges routinely hear inadmissible evidence that they are presumed to ignore when making decisions.”).

Respondent, for its part, objects to the text messages attached to the testimony declaration of Alexa Orndoff (Petitioner’s Director of Marketing and Communications) in Exhibits B and C on the grounds that the exhibits constitute inadmissible hearsay and were not properly authenticated.¹⁴ Exhibits B and C are comprised of text messages between a member of Ms. Orndoff’s team and two

¹² 43 TTABVUE 52-53 (Petitioner’s Brief); 48 TTABVUE 27 (Petitioner’s Reply Brief).

¹³ 43 TTABVUE 51-52.

¹⁴ 47 TTABVUE 54-55 (Respondent’s Brief).

potential Jekyll Island visitors.

The hearsay objection is sustained to the extent that we do not consider them for the truth of the matters asserted, a position we take whether or not there is a pending objection to such evidence.¹⁵

As to Respondent's lack-of-authentication objection, Ms. Orndoff testified that she "guided the responses to both confused customers" and thus has first-hand knowledge of the documents attached as exhibits. The authentication objection is overruled.

II. The Record

The record consists of the pleadings, the file history of Respondent's registration by operation of Trademark Rule 2.122(b)(1), 37 C.F.R. § 2.122(b)(1), and additional evidence introduced by the parties.

Petitioner filed notices of reliance on Respondent's answers to Petitioner's interrogatories¹⁶ and the discovery deposition of Ryan Owens, Respondent's sole owner and President, pursuant to Fed. R. Civ. P. 30(b)(6);¹⁷ as well as the testimony and/or rebuttal testimony declarations of Brian Lee (Petitioner's Digital Content

¹⁵ Objections on the basis of hearsay are generally unnecessary in cases before the Board, as distinguished from a case presented to a jury in court, where the court has an interest in preventing the jury from being swayed as to the truth that may asserted by a hearsay statement. "Because a cancellation proceeding is akin to a bench trial, the Board is capable of assessing the proper evidentiary weight to be accorded the testimony and evidence, taking into account the imperfections surrounding the admissibility of such testimony and evidence." *Peterson v. Awshucks SC, LLC*, 2020 USPQ2d 11526, at *11-12 (TTAB 2020).

¹⁶ 13 TTABVUE ("Respondent's Interrogatory Responses").

¹⁷ 16 TTABVUE ("Owen 30(b)(6) Dep.").

Manager),¹⁸ C. Jones Hooks (Petitioner's Executive Director),¹⁹ Alexa Orndoff, (Petitioner's Director of Marketing and Communications),²⁰ Rebecca Cooley (a paralegal at the law firm that represents Petitioner),²¹ Scott McQuade (President and CEO of the Golden Isles Convention and Visitors Bureau),²² Christie Kinsey (a Jekyll Island resident and member of the Jekyll Island Arts Association and the Jekyll Island Foundation Board),²³ Kimberly Dixon (an assistant manager at the Jekyll Island Campgrounds),²⁴ and Matthew Young (a visitor to Jekyll Island),²⁵ including any exhibits introduced therein.

Respondent filed the testimony and rebuttal testimony declarations of Ryan Owens with exhibits,²⁶ and notices of reliance on emails received from third parties and printouts from Respondent's website.²⁷

¹⁸ 14 TTABVUE ("Lee Test. Decl.").

¹⁹ 15 TTABVUE ("Hooks Test. Decl."); 27 TTABVUE ("Hooks Rebuttal Test. Decl.").

²⁰ 17 TTABVUE ("Orndoff Test. Decl."); 30 TTABVUE ("Orndoff Rebuttal Test. Decl.").

²¹ 25 TTABVUE ("Cooley Rebuttal Test. Decl.").

²² 28 TTABVUE ("McQuade Rebuttal Test. Decl.").

²³ 29 TTABVUE ("Kinsey Rebuttal Test. Decl.").

²⁴ 37 TTABVUE ("Dixon Test. Decl.").

²⁵ 38 TTABVUE ("Young Test. Decl.").

²⁶ 18 TTABVUE ("Owens Test. Decl."); 19 TTABVUE (exhibits); 39 TTABVUE (exhibits); 40 TTABVUE ("Owens Amended Test. Decl.").

²⁷ 41 TTABVUE (emails); 42 TTABVUE (website printouts). Letters and emails are generally not proper subject matter for introduction by notice of reliance because they do not constitute printed publications under Trademark Rule 2.122(e). However, Petitioner has treated these materials as being of record, setting forth in its brief that such materials are part of "Respondent's evidentiary record." Therefore, we consider Petitioner to have stipulated to the submission of this evidence, and have treated it as of record. Respondent also filed a notice of reliance on Google analytics reports related its website, 22 TTABVUE, but such documents are not admissible by a notice of allowance and were not treated as of record by Petitioner, so we do not consider them.

III. Entitlement to a Statutory Cause of Action

“Entitlement to a statutory cause of action, formerly referred to as ‘standing’ by the Federal Circuit and the Board, is an element of the plaintiff’s case in every inter partes case.” *Illyrian Import, Inc. v. ADOL Sh.p.k.*, 2022 USPQ2d 292, at *17 (TTAB 2022) (citations omitted). To establish entitlement to a statutory cause of action under Section 14 of the Trademark Act, Petitioner must demonstrate (1) an interest falling within the zone of interests protected by the statute; and (2) a reasonable belief in damage proximately caused by registration of the applied-for mark. *See Meenaxi Enter., Inc. v. Coca-Cola Co.*, 38 F.4th 1067, 2022 USPQ2d 602, at *2 (Fed. Cir. 2022) (citing *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 109 USPQ2d 2061, 2068-69 (2014)).

Petitioner asserts in its brief that “Petitioner and Respondent operate competing websites that market to visitors of Jekyll Island,” which is supported by the testimony Ms. Orndoof and Mr. Hooks.²⁸ Furthermore, Respondent acknowledges in its brief that “Petitioner is a direct competitor to [Respondent]....”²⁹ Because Petitioner and Respondent are direct competitors, and none of Petitioner’s claims are wholly without merit, Petitioner has demonstrated an interest falling within the zone of interests protected by the Trademark Act, as well as a reasonable belief in damage proximately caused by the registration of Respondent’s mark. Petitioner’s entitlement to bring a statutory action against Respondent’s registration is established. *See Books on Tape*,

²⁹ 47 TTABVUE 34 (Respondent’s Brief).

Inc. v. Booktape Corp., 836 F.2d 519, 5 USPQ2d 1301, 1302 (Fed. Cir. 1987) (competitor entitled to petition to cancel registration of BOOKTAPES issued on the Supplemental Register); *Alcatraz Media*, 107 USPQ2d at 1760 (finding entitlement based on petitioner being a competitor and using a similar term); *Plyboo Am., Inc. v. Smith & Fong Co.*, 51 USPQ2d 1633, 1634 (TTAB 1999) (petitioner's entitlement based on its status as competitor). *See also Lipton Indus. Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982) (reasonable belief in damage may be established by "assert[ing] a likelihood of confusion which is not wholly without merit").³⁰

IV. Deceptiveness

Trademark Act Section 2(a) bars registration of a mark on the Principal Register that "consists of or comprises ... deceptive ... matter." 15 U.S.C. § 1052(a). A deceptive mark cannot be registered on either the Principal or Supplemental registers. *Id.*; 15 U.S.C. § 1091.

We determine whether a mark is deceptive based on the identification of goods and/or services. *See In re ALP of S. Beach Inc.*, 79 USPQ2d 1009, 1019 (TTAB 2006) ("Registrability of a mark is always considered in conjunction with the identified goods or services, for an applicant cannot obtain rights in a mark in the abstract, only in connection with specified goods or services."). "It is well established that a mark

³⁰ Respondent's contention that "Petitioner lacks standing to assert any claims to trademarks, 'common law' or otherwise" because it "has never owned or registered any trademarks or intellectual property with the USPTO," 47 TTABVUE 18, has no legal support and thus lacks merit.

may be found deceptive on the basis of a single deceptive term that is embedded in a larger mark.” *In re White Jasmine LLC*, 106 USPQ2d 1385, 1391 (TTAB 2013).

The Federal Circuit has “established a three-part test for determining whether a mark is deceptive pursuant to Section 2(a):

- (1) Is the term misdescriptive of the character, quality, function, composition or use of the goods [or services]?
- (2) If so, are prospective purchasers likely to believe that the misdescription actually describes the goods [or services]?
- (3) If so, is the misdescription likely to affect the decision to purchase?”

Hoover Co. v. Royal Appliance Mfg. Co., 238 F.3d 1357, 57 USPQ2d 1720, 1723 (Fed. Cir. 2001) (citing *In re Budge Mfg. Co., Inc.*, 857 F.2d 773, 8 USPQ2d 1259, 1269 (Fed. Cir. 1988)).

- A. Does the term OFFICIAL misdescribe a character, quality, function or use of the services identified in the application?

Just as “[a] mark need not describe all of the goods or services in an application to be descriptive,” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Stereotaxis, Inc.*, 439 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005)), a mark need not misdescribe all of the services identified in a single class in a registration to find it misdescriptive. It is sufficient to prove that a term misdescribes any of the identified services. Here, we choose to focus on whether the term “official” in Respondent’s mark is misdescriptive of Respondent’s identified services of promoting tourism and recreation in Jekyll Island, as well as its variously identified services of promoting tourism, business, travel, tourism, and conventions in the area.

Respondent requests that we take judicial notice of the term “official” from Dictionary.com and THE MERRIAM-WEBSTER DICTIONARY, BUT provides only links to those definitions rather than copies of the actual definitions for us to review.³¹ Nevertheless, these terms must be defined, so we grant the request as to the definition of “official” in THE MERRIAM-WEBSTER DICTIONARY, and sua sponte take notice of the applicable definitions in THE AMERICAN HERITAGE DICTIONARY and the COLLINS COBUILD ADVANCED LEARNER’S DICTIONARY.³² According to these sources, “Official” means: “[a]uthorized by a proper authority; authoritative: official permission”;³³ “prescribed or recognized as authorized”;³⁴ and “approved by the government or by someone in authority.”³⁵

Respondent admitted, in its answer to the petition for cancellation, that “[b]y incorporating the word ‘official’ in the mark, Respondent’s [mark] suggests to consumers that the services Respondent provides via its website are the authority on = [sic] Jekyll Island or come from an ‘official’ source related to Jekyll Island.”³⁶

³¹ 43 TTABVUE 27 (Petitioner’s Brief).

³² The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *Threshold.TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

³³ THE AMERICAN HERITAGE DICTIONARY (ahdictionary.com/word/search.html?q=official), accessed August 18, 2023.

³⁴ MERRIAM-WEBSTER DICTIONARY (merriam-webster.com/dictionary/official), accessed August 18, 2023.

³⁵ COLLINS COBUILD ADVANCED LEARNER’S DICTIONARY (collinsdictionary.com/dictionary/english/official), accessed August 20, 2023).

³⁶ 8 TTABVUE 13 (Amended Petition for Cancellation ¶ 46); 9 TTABVUE 5 (Answer ¶ 46).

Respondent also admitted in its answer that it is not affiliated with Petitioner (the governmental body that has official authority over Jekyll Island³⁷) or the State of Georgia (which owns the island).³⁸ In addition, Respondent's owner and president, Ryan Owens, testified in his 30(b)(6) deposition that neither he nor anyone else connected to Respondent's explorejekyllisland.com website has ever had an "official" role or capacity with Petitioner.³⁹

Respondent argues, nonetheless, that "[t]he meaning of words can never assumed [sic] to be literal, or defined singularly, or fixed in meaning or concept - especially when it comes to creative advertising and marketing."⁴⁰ As such, "it is not clear nor determinable what exactly 'official' means nor who is in a position to define it or deem it so";⁴¹ the word "is completely subjective and has several meanings and interpretations, [and] can be a noun or an adjective."⁴²

This argument lacks merit. We do not need to assume that the term OFFICIAL in Respondent's mark (THE OFFICIAL WEBSITE OF JEKYLL ISLAND) is used literally;

³⁷ 16 TTABVUE 17 (Owens 30(b)(6) Dep., p. 56:20-23).

³⁸ 8 TTABVUE 13 (Amended Petition for Cancellation ¶ 48); 9 TTABVUE 6 (Answer ¶ 48).

³⁹ 16 TTABVUE 5, 17-18 (Petitioner's Notice of Reliance on the 30(b)(6) deposition of Ryan Owens, pp. 54:20-23, 57:17-58:1). *See also Id.* at 11 (Response to Interrogatory No. 7).

⁴⁰ 47 TTABVUE 16 (Respondent's Brief (¶ 22)).

⁴¹ *Id.* at 15 (¶ 20).

⁴² *Id.* at 17 (¶ 21). Respondent poses a number of hypotheticals that are either not on point or are absurd. For example, Respondent asks, "Does the 'official' sports beverage of the NFL mean that NFL players can only drink that specific beverage? Is that beverage made by the NFL? Gatorade is the 'official sports drink of the NFL' however no reasonable person would assume that the NFL makes sports drinks. Does 'official' mean that beverage is sanctioned? ..." Clearly, Respondent misses the point. A slogan such as "the official sports beverage of the NFL," implies that the product is sponsored by the NFL, such that use by Gatorade would be perceived as authorized.

we can see that for ourselves in the way it used. Therefore, the fact that the word “official” has additional meanings in different contexts is not controlling. *See In re Tapco Int’l Corp.*, 122 USPQ2d 1369, 1372 (TTAB 2017) (“[D]eceptiveness ... is not considered in the abstract” but rather “must be determined in relation to the goods [or services] for which registration is sought. Therefore, the fact that a term may have different meanings in different contexts is not controlling.”).

We find that the term “OFFICIAL” in Respondent’s mark (THE OFFICIAL WEBSITE OF JEKYLL ISLAND) misdescribes the character of its website services because it connotes that such services are provided with official permission and/or are approved by the government or by someone in authority such as by Petitioner, “a legislatively-created state authority to oversee and manage Jekyll Island, a state park,”⁴³ when in fact they are not.

B. Are prospective purchasers likely to believe that the misdescription actually describes the services?

Visitors to Respondent’s website (explorejekyllisland.com) are immediately confronted by the misdescription that the website is “official.” An image of the banner that appears at the top of every page of Respondent’s website is depicted below:



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⁴³ 17 TTABVUE 2, ¶ 2 (Orndoff Test. Decl.).

⁴⁴ 16 TTABVUE 87-245 (Owens 30(b)(6) Dep., Exhibit 2, highlighting added for emphasis).

Petitioner argues that “[w]hen consumers go to a website deemed ‘The Official Website of Jekyll Island,’ they believe they are visiting an authentic source of information about Jekyll Island,” pointing to the testimony of Christie Kinsey (a Jekyll Island home owner of seven years and regular visitor to the island since 1976) for support.⁴⁵ Ms. Kinsey testified that in her view, “the term ‘official’ suggests that the speaker has power over the given subject matter.”⁴⁶ Thus, she concluded: “If a website claims to be the official source of information for a particular location, I would expect that website to be run by the local government, or an entity approved by the local government.”⁴⁷ “In my experience based on living on Jekyll Island and from visiting for forty years, [Petitioner] is the only official source of information for Jekyll Island.”⁴⁸ Ms. Kinsey’s testimony supports a finding that the “official” misdescription is likely to be believed by consumers.

Another witness, Matthew Young, testified about a bad experience he had as a result of believing the “official” misdescription in Respondent’s mark:

My wife and I live in Grady County, Georgia. ... On or around May 29th [2022], we were near Jekyll Island, and I decided to stop at the Jekyll Island Campgrounds....

Most campsites that I have visited require customers to make a reservation prior to arriving. Knowing this, I used the Google search engine and searched for “Jekyll Island Campgrounds.” The website explorejekyllisland.com was on the first page of search results....

⁴⁵ 43 TTABVUE 18 (Petitioner’s Brief); 29 TTABVUE 2 (Kinsey Rebuttal Test. Decl. ¶¶ 2-3).

⁴⁶ 29 TTABVUE 3 (Kinsey Rebuttal Test. Decl. ¶ 8).

⁴⁷ *Id.*

⁴⁸ *Id.* (¶ 9).

I initially thought that this website was run by or associated with the Campgrounds. I thought this in part because the website has pictures and videos of the Campgrounds ... [and] because the website says it is “The Official Website of Jekyll Island” and has a trademark symbol after these words. I thought this meant that the website was a legitimate source for the Campgrounds.

The website showed that there were two campsites available on the Campgrounds. My wife and I chose our preferred campsite and paid our reservation fee. ...

So after ... I received a call from Kimberlee Dixon, an employee at the Jekyll Island Campgrounds. She informed me that my existing reservation was not valid and was made using a system that the Campground no longer actively uses. Ms. Dixon helped me to make a reservation with the Campgrounds.

Upon seeing the trademark “The Official Website of Jekyll Island”, I believed that the entity running the website was actually located on Jekyll Island. ...

I now understand that explorejekyllisland.com is run by the Respondent in this case, and not be the Campgrounds or the Jekyll Island Authority. I find this confusing. The Respondent’s website says that it is “The Official Website of Jekyll Island”. I expect an “official” website to be associated with the entity I want to do business with. In my case, I expected explorejekyllisland.com to be associated with the Campgrounds or the Jekyll Island Authority.⁴⁹

Petitioner, the state-governmental authority that runs the island, “owns and operates the Campgrounds.”⁵⁰ Mr. Young’s testimony further supports a finding that the “official” misdescription is believable.

⁴⁹ 38 TTABVUE 3 (Young Test. Decl.). Petitioner, the governmental authority that runs the island, *see* “owns and operates the Campgrounds.”

⁵⁰ 37 TTABVUE 3 (Dixon Test. Decl. ¶ 3).

We find that prospective purchasers are likely to believe the misdescription in Respondent's mark THE OFFICIAL WEBSITE OF JEKYLL ISLAND.

C. Is the misdescription in the mark likely to affect the decision to purchase or use the services?

It is common knowledge that consumers are interested in the "official" or authorized version of things. Given that Jekyll Island is a state park run by a governmental authority (Petitioner), consumers naturally will want to get the "official" take on the rules and regulations concerning the island during their visit and island-sponsored events. Respondent's mark suggests that Respondent's website has the seal of government approval and thus may have accurate information (whether that, in fact, is true). We therefore find that the misdescription in Respondent's mark is likely to affect the purchasing decision of consumers to use Respondent's website services.

D. Conclusion on Deceptiveness

In view of the foregoing, we find that Petitioner has proved by a preponderance of the evidence that Registrant's mark THE OFFICIAL WEBSITE OF JEKYLL ISLAND in Registration No. 6044377 is deceptive under Section 2(a).

Decision: The petition for cancellation is granted on the ground of deceptiveness under Section 2a).⁵¹ Registration No. 6044377 will be cancelled in due course.

⁵¹ Because we have resolved this proceeding on Petitioner's deceptiveness claim, we do not reach Petitioner's other claims. *Yazhong Inv. Ltd. v. Multi-Media Tech Ventures, Ltd.*, 126 USPQ2d 1526, 1540 (TTAB 2018); *Multisorb Tech., Inc. v. Pactiv Corp.*, 109 USPQ2d 1170, 1171 (TTAB 2013).